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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,120	10/24/2003	Jerry Cismoski	CU-3415	1648

7590

09/22/2004

Richard J. Streit
Ladas & Parry
Suite 1200
224 South Michigan Avenue
Chicago, IL 60604

EXAMINER

SCHULTERBRANDT, KOFI A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/693,120

Applicant(s)

CISMOSKI ET AL.

Examiner

Kofi A. Schullerbrandt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>121503</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This first Office Action is in response Applicant's originally filed Application received in the Office on October 24, 2003 in this case.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 5, 10, 12, 16 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 4, 5 and 16 recite an opening "shaped and configured to". Thereafter, claims 4 and 5 recite features the examiner does not consider to be positively claimed. In other words, it is unclear whether Applicant intends to positively claim, for example, the fastener of claim 4 or the tightly fitting collar of claim 5. The examiner does not consider these features to be positively recited.

Regarding claim 10, the phrase "horizontally below" in line 4 is unclear. Applicant should probably delete the word "horizontally". Correction or clarification is required.

Claims 12 and 17 recite "sized and configured to" and "shaped and configured to" respectively. Thereafter, claim 12 recites language that the examiner does not consider to be positively recited. In other words, it is unclear whether Applicant intended to

positively claim a "tight fitting collar". The examiner does not consider this language to be positively recited. Correction or clarification is required.

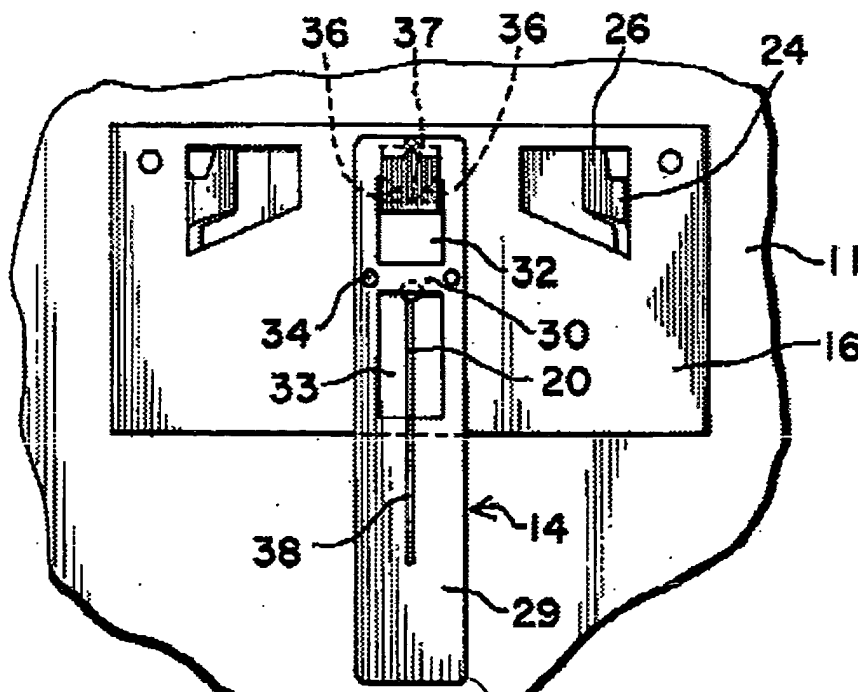
Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 12, 13, 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Ballin (3,955,790). Ballin teaches each feature of the claimed invention as shown below.



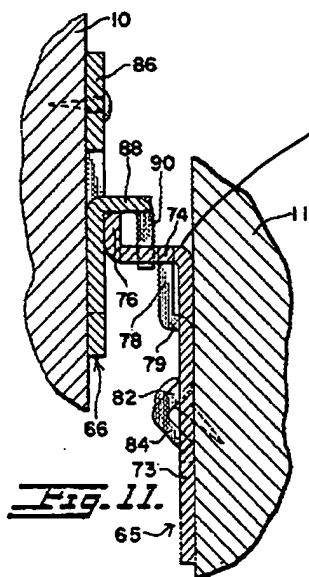
Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballin (3,955,790), in view of Brock (2,527,982). Ballin teaches, substantially, each feature of the claimed invention as discussed above. Ballin does not teach a lower arm with markings. Brock, however, teaches a level indicating means with markings. It would have been obvious to one of ordinary skill in the art at the time of invention to have modified Ballin's pendulum level indication system to be replaced with Brock's pendulum level indication system in order to more accurately determine the level of Ballin's hanger. Regarding claim 9, Ballin teaches hook members (90).

Claims 8, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballin (3,955,790), in view of Knight. Ballin teaches, substantially, each feature of the claimed invention as discussed above including a first hole (83). Ballin does not teach a second hole. Knight, however, teaches a first hole (5, Figure 3) and a second hole (7, Figure 3) below the first hole. It would have been obvious to one of ordinary skill in the art at the time of invention to have modified Ballin to include a second hole below the first as taught by Knight in order to better secure Ballin's hanger device to the vertical structure.



shoulder

horizontal arm end

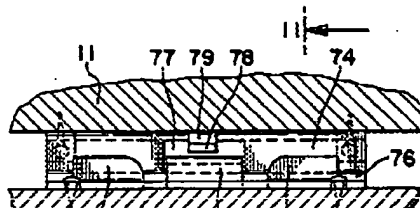
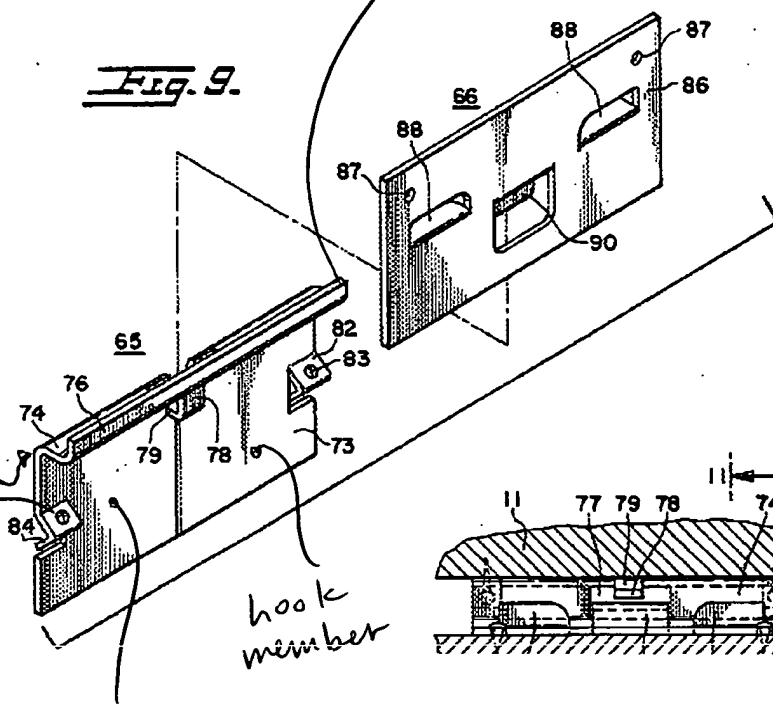
Fig. 9.

hanger
portion

opening

hook
member

hook
member



Allowable Subject Matter

Claim 10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Reasons for Indicating Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter: Regarding claim 10, the prior art of record does not teach, in combination with the other features of claim 9, additional hook members removably affixed to the hook members disposed at each end of the horizontal arm, each additional hook member including a first opening and a second opening the second opening being disposed below the first opening.

Prior Pertinent Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. '430 to Malakates et al.; '161 to Wallo ; and '355 to Herzig each teach picture hanger inventions.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kofi A. Schulterbrandt whose telephone number is


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(703) 306-0096. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kofi Schulterbrandt
September 16, 2004


LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER